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In re Application of
KEIM et al.
Application No.: 10/531,159
PCT No.: PCT/US03/32887
Int. Filing Date: 14 October 2003
Priority Date: 11 October 2002
Attorney's Docket No.: 112624.00029
For: MOLECULAR SIGNATURE AND ASSAY
FOR FLUOROQUINOLINE RESISTANCE IN
BACILLUS ANTHRACIS

DECISION

This decision is in response to applicants' renewed petition under 37 CFR 1.10(d) filed on 03 March 2006.

BACKGROUND

On 14 October 2003, applicants filed international application PCT/US03/32887, which designated the U.S. and claimed a priority date of 11 October 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 02 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 April 2005 (29 January 2005 being a Saturday).

On 12 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 June 2005, applicants filed a petition under 37 CFR 1.10(d) requesting that the papers filed in the submission for entry into the national stage be accorded a date of 11 April 2005 rather than 12 April 2005.

On 27 September 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS

provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 19 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America as per the decision mailed 27 September 2005.

On 03 March 2006, applicants filed the instant renewed petition under 37 CFR 1.10(d).

DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 12 April 2005. The "Express Mail" label number EV667329735US is shown on the Transmittal Letter which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "041205".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As noted in the decision mailed 27 September 2005, a satisfactory showing has been made under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicants still have not provided a satisfactory showing. 37 CFR 1.10(d)(3) requires any showing "be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the

‘Express Mail Post Office to Addressee’ service of the USPS.” As to this type of evidence, applicants have provided a letter from the USPS and a courier log from the courier who picked up the package at the law firm and delivered it to the USPS. Regarding the letter, as noted in the decision mailed 27 September 2005, the letter fails to set forth the factual basis on which the conclusion was based and that if her conclusion was based on evidence provided to her by the law firm, then it would not constitute independent corroborating evidence.

As to the courier log, it appears to be intended to satisfy what MPEP § 513 indicates is an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). The relevant portion of MPEP § 513 states:

... a notation in a log book, entered after deposit by the person who deposited the correspondence as “Express Mail” within one business day of such deposit, setting forth *the items indicated above*, would be deemed on petition to be an adequate showing of the date of deposit under 37 CFR 1.10(d)(3). (emphasis added)

The “items indicated above” are

... a log book which contains information such as the “Express Mail” number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor’s initials or signature; and the date and time of entry in the log.

The document provided by applicant includes the date and time of deposit. However, it does not appear to include any of the other information. In particular, it does not include the “Express Mail” mail number, any file identification number, or the date and time of entry in the log. Without the “Express Mail” mail number and file identification number, it is not clear how one is to reliably identify the package at issue. Without the date and time of entry in the log, it is not clear if the log came into being within one business day after deposit.

CONCLUSION

For the reasons set forth above, applicant’s renewed petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled “Renewed Petition Under 37 CFR 1.10(d).” No additional petition fee is required.

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(b) requesting that the application be revived.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

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Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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